

1901-012 Chancery Causes: P. H. Allen &c vs Annis Litton &c
Lee Co.

Noel, Gilly, Gilley, Howard, Skaggs, Johnson, Parks

CA. Estate Dispute
T. Property

To the Hon. A. A. W. Sheen, Judge of the Circuit
Court of Lee County, Virginia.

Your complainants, P. H. Allen and E. L. Noel,
complaining sheweth unto the Court that C
Howard in his life was seized and possessed of
certain real estate lying in the County of Lee in
the town of Pennington Gap, and known as the
Howard Reserve, and being ^{seized and} possessed the said
C. B. Howard died intestate leaving R. J. Skaggs
his Howard, Mary Gilley ne Howard, E. O. Howard, now Johnson,
J. Milton Howard, and the children of his deceased daughter
Mary Gilley ne Howard, to wit: C. E. Parks ne Gilley, Emory, bred,
T. P. Gale and Annie Gilley, his only heirs at law.

By an order of your Honors Court entered on the
14 day of May 1873, the said lands were
partitioned among the said heirs aforesaid, and in said
partition Lot No 2, was assigned and allotted to the
said children of the aforesaid Mary Gilley (deceased)
which said lot No 2, was one child's part in the said
estate of the said C. B. Howard, and which said
lot is bounded as follows, to wit: Part No 1 by Joslyn Avenue
on the north, by the lands of P. H. Allen on the east and west, and by
the right of way of the L. & N. R. R. Co. on the south. Part No. 2 on
the north by Morgan Avenue on the east by the lands of E. O. Johnson,
on the south by Joslyn Avenue, and on the west by that part
of the Howard reserve known as the Brownlie property; Part No.
3 is lies north of Morgan Avenue, and is bounded on the west
by the E. O. Bolds property, on the north by ^{the lands of the} Pennington Gap
improvement company, and on the south by lands of Docta ~~ne~~
Johnson: That since the aforesaid Lot No 2, was laid off and
assigned to the said children of the said Mary Gilley (deceased)
Your complainant P. H. Allen has purchased and now

1 owns the undivided interest of the said C.E. Parkson
2 Gilley and your other complainant E.L. Noel has
3 purchased the undivided interests of the said Emory
4 Gilley and breed Gilley in said Lot No 2 of said
5 Howard Reserve. The said Annis Gilley who is now married
6 to one Bradley Litter has contracted to sell her undivided
7 interest to the said E.L. Noel, but has not as yet conveyed
8 the same by proper deed. The said Tip Gilley and
9 Leale Gilley are still infants under the age of twenty one
10 years.

11 Your complainants further state that from the situation
12 and character of the said lot of land, that they do not
13 believe that it can be well partitioned among the parties
14 entitled thereto, but that if the same be ~~for~~ susceptible of
15 partition they desire that it be so partitioned, so that the
16 said interest of your complainant R.H. Allen be adjoining
17 his other lands, and that the two shares of the said E.L. Noel
18 and the one share of the said Annis Litter be laid off together
19 provided that the same can be done without injury to the other
20 parties interested therein. But if it cannot be so divided,
21 then your complainants desire that the same may be
22 sold and the proceeds divided among the adults and
23 infant parties according to their respective rights: the shares
24 of the infants to be held as directed by the statute in
25 such case made and provided. Should the property not
26 be divisible in kind, complainants believe and here
27 state that the interests of those who are entitled to the
28 said real estate, or its proceeds, will be promoted by a sale
29 of the whole of the same, or by an allotment of part and
30 sale of the residue. For as much, therefore, as your
31 complainants are remediless in the premises, save by the
32 aid of a court of equity, they pray that the said

1 Annis Litter and Bradley Litter, Tip Gilley and Gale
2 Gilley, may be made parties defendants to this bill
3 and required to answer the same, but not upon oath,
4 the oath being hereby waived, the said adults in their
5 own proper person, and the infants by guardian ad
6 litem: that a proper guardian ad litem be appointed in
7 this cause for the said infants who shall answer this bill;
8 that proper process issue; that the said real estate be
9 divided among the parties entitled thereto, or else that it be
10 sold in its three separate parts, and the proceeds divided,
11 in case it be indivisible in kind; that all proper orders
12 and decrees may be made, accounts taken and enquiries directed
13 and that all such other, further and general relief as in the
14 premises may be just and right may be granted. And your
15 Complainants will ever pray, etc.

16 J. C. Noel p. q.

Plffs Costs
 Clerk 10.81
 Tax 1.50
 Shff 3.00
 atty 15.00
 G.A.L. 5.00
 Printer 5.00
 Comrs 5.00
 \$45.31

P.A. Allen vs E.L. Noel
 vs Bill du Chene
 Annis Litter et al.
 1901 2nd Feby rules Bill
 filed aunts executed as to
 home depts & Order of
 Publication as to nonresi-
 dent depts & D.N.
 " 1st March rules taken
 the last Monday in
 Feby D.P. Complete D.N.
 Confd & Cause set for
 hearing.

Nov Term 1901 Decree
 final O.B. No 7 Page
 21.

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 Clerk 10.81
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 atty 15.00
 G.A.L. 5.00
 Comrs 5.00
 Printer 5.00
 \$45.31

Answer of Gale Gilley, and Tip Gilley, By \$\$\$\$\$\$

H.O. Ballou, their gaurdian ad litem, to a bill of complaint
exhibited against themselves and others,

P. H. Allen and E. L. Noel In the Circuit
Court of Lee County,

These respondents, saving all just exceptions, & . C . for
answer to the said bill, say that being infants, they submit
their rights involved in the same to the protection of the
Court.

And having answered, they pray to be dismissed, & . C .

H. O. Ballou
Gaurdian, ad litem.

Sworn to before me by H. O. Ballou this Feby 18th 1901
A B Munsey Clerk

P. H. Allen & E. L. Nail

vs J. M. Chan.

Ann's Letter et al

Answer by Guardian ad litem

Filed Feb'y 18th 1901

A. B. Munsey Clerk

P. H. Allen & E. L. Noel, Plffs,

vs

Annis Litton et al

} In Chancery.

This cause came on again this day to be further heard upon the papers formerly read therein, and the report of commissioner J. C. Noel, filed this day showing he had made deeds to W. T. Gilley, P. H. Allen and E. L. Noel as directed, which reports and deeds are unexcepted to, and was argued by counsel. On consideration of all which and for reasons appearing to the court; it is adjudged ordered and decreed that said report and deeds are approved confirmed and adopted. And this cause is stricken from the docket.

P. H. Allen & E. L. Noel
vs Decree Final
Annis Lillor et al
Entered on 14th Q. B.
Nov 7 Page 21

Entered this 12 day
of Nov. 1901.

H. A. O. Allen

Judge.

P. H. Allen et al

vs

} In & having

Annis Linton et al

This Cause came on this 3rd day of June 1901, to be again heard upon the papers formally read therein, and upon the the report of E. W. Thompson, J. M. Andis and W. G. Burgain, Special Commissioners, and was argued by counsel.

Upon consideration of all which, and it appearing that said report had been filed for at least 10 days, before the first day of this term, and the same is unexcepted to, it is therefore adjudged ordered and decreed that said report be, and is hereby, approved, accepted, and adopted.

And it appearing to the Court from said report that the land mentioned in the Complainant's bill, is not susceptible of partition in kind, it is therefore adjudged ordered and decreed that the same be sold in three separate parcels, to wit: that lying on the North side of Morgan Avenue, to itself, that lying between Morgan and Joslyn Avenue to itself, and that lying South of Joslyn Avenue to itself; and it is further adjudged, ordered, and decreed, that J. C. Noel, who is hereby appointed a Special Commissioner of this Court for the purpose, shall at some Court-day of the County Court for Lee County

at the front-door of the Court-house thereof,
after having advertised the time, terms and
place of sale for at-least-30 days, by posting
notices thereof at the front-door of said
Court-house, at Pennington Gap, and
Dryden, proceed to sell said land, upon
a credit-of one and two years time, except
that enough out-of the proceeds of said
sale be paid. As may be necessary to pay the costs
of this suit and commission of sale shall be paid down,
and that said J. H. Noel will take the
bonds of the purchasers of said land with
good and sufficient-surety-thereof, payable to
himself as Commissioner. Before advertising said
sale, the said Noel shall enter into bond with
good and sufficient-surety in the sum of \$300⁰⁰
for the faithful performance of his duties as such com-
missioner. He will report his action to some
future term of this Court; and this cause is
continued.

P. H. Allen

W. J. Deane con-
firming com. report

Annis Lister et al

Entered and Chy
Q. B. No. 6. P. O. P. 2

Entered June 4/61

H. A. S. Sherr
Judge

P. H. Allen and E. L. Noel,

vs

Annis Litton et al

In Chancery.

This cause came on this the 5th day of March 1901, to be heard upon the plaintiffs bill and the papers filed therewith, and the answer of Gale Gilley and Tip Gilley the infant defendants, by W. D. Ballou their guardian ad litem, who was appointed by said Court to defend them in this suit, and was argued by counsel, and it appearing that all the defendants had been duly served with process according to law, the adults and the infant Gale Gilley by personal process, and Tip Gilley who is a non-resident - by proper order of publication, and the adult defendants not appearing to plead, answer or demur, the bill is taken as confessed as to them.

And it appearing further, that said plaintiffs are entitled to have the lands mentioned and described in the plaintiffs bill partitioned in kind if the same can so be done, and if not that the interest of all parties thereto will be promoted by a sale of the said lands, and a division of the proceeds divided among those entitled thereto, and that there are no creditors of the said parties ~~will be~~ whom will be prejudiced by said sale, it is therefore, adjudged ordered and decreed that: W. E. Thompson, J. M. Andis and W. G. Burquin, who are

hereby appointed special commissioners
for that purpose, will go upon the said
lot or parcel of land known as lot-1102,
in the partition of the Howard Reserve, ~~after~~
~~having been sworn for the purpose by~~
in the town of Pennington Gap, in said
County of Lee, and if the same can be
conveniently done, will partition the said
land among those entitled to the same,
that is to say that they will lay off and
assign to P. H. Allen a one sixth interest
in said land, this interest ~~is to be laid off~~
~~be laid off next to~~ if the same can be
done without material injury to the other
parties in interest will be laid off joining
the lands of the said P. H. Allen; they will
lay off and assign to E. L. Noel three sixths
of the entire lands, since she has acquired
by deed since the institution of the suit
the interest of Annis Linton in said lands,
these three sixths of said land the said
Commissioners will lay off together, if the
same can be done without material injury
to the other parties in interest; and the residue
of said land the said Commissioners will
assign to the infant defendants, Rip and
Gale Gilley, respectively. In making
said partition the said Commissioners
shall have due regard to situation, accessibility,
to streets, location, and quality of soil.
If the said lands are not susceptible

of partition, the said commissioners will report
that fact; The said commissioners will
report their action to some future term
of this court and this cause is continued
..

P. H. Allen & E. L. Koch
vs Deere no. 6.

Annis Litton et al
Entered on Levy Order
Book No 6 Pages
492 & 493

Entered this 5 day
of March 1901.

Haw Stuen
Judge.

To the Hon. H. A. W. Shen, Judge of the
Circuit Court for Lee County, Virginia.

Your undersigned Special Commissioners,
who were appointed by a decree of your honor-
able court entered on 5 day of March 1901, in the
Chancery Cause of P. H. Allen and E. L. Noel
vs Anna Lilton et al. to go upon the lot or
parcel of land known as Lot No. 2 in the
partition of the "Howard Reserve" which is
situated in the town of Pennington Gap in
said County of Lee, and to partition the same
among the parties in interest thereto, provided
the same could be conveniently done, allotting
the said lands as follows, to wit: to P. H. Allen
one sixth, E. L. Noel three sixths, Gale and
Tip Gilley infants each one sixth, with in-
structions to lay off the interests of P. H.
Allen adjoining his lands and the interests
of E. L. Noel together, if the same could
be done without material injury to the other
parties in interest ^{and if said lands could not be partitioned to report that fact.} they leave to report that
in pursuance to said decree they went upon
said land on the 30 day of March 1901, to execute
and perform their duties under the requirements
of said decree, and attempted to partition the
said lot of land according to the direction given
them by the court; but upon viewing the
situation, and finding the piece of land
cut into three unequal portions, by two
wide streets, they found it impossible
to divide said land according to the rights
of all parties concerned without greatly injuring

1 if not entirely destroying the the value of the
2 whole. One part which is not more than one
3 sixth in value, lies north of Morgan Avenue,
4 another which is in value worth a little more than
5 half the whole tract lies between Morgan
6 and Joslyn Avenues, and the residue which
7 is perhaps in value $\frac{2}{3}$ of the whole lies south
8 of Joslyn Avenue, making it impossible
9 to divide the same, without stringing out
10 each share clear through the three pieces of
11 or parts from the right of Way of the Greenville
12 & Nashville Railroad, to the Improvement
13 Company's land. which would make ~~each~~ ^{each} share
14 about 12 feet wide, and divided into three pieces.

15 Therefore your Commissioners report that
16 the land cannot be divided in kind
17 among the different parties without greatly
18 injuring the rights of all the parties!

19 They recommend that the land be sold
20 and that the same be offered for sale in
21 three parts, that is, that that part North
22 of Morgan Avenue be sold to itself, that
23 that part lying between Morgan and Joslyn
24 Avenues be sold to itself, and that the
25 part south of Morgan Avenue be sold to itself,
26 and that the proceeds of the sale be divided
27 among the parties ^{according to their respective interests}. All of which is

28 respectfully submitted this 30 day of
29 March 1904.

W. E. Thompson Surveyor.

G. M. Andis

W. G. Buggan

P. H. Allen and E. L. Naeel
vs { Commissioners Report
Annis Lutton
Filed May 24th 1901
A. B. Munsey
Clerk

Costs:
W. E. Thompson \$1.00
W. L. Burgeon 1.00
J. M. Andis 1.00
Copy of Howard
Partition 2.00
for County Court Clerk.

To the Hon H.A. Skeen, Judge of
the Circuit Court for Lee County.

The undersigned, who was appointed
by a decretal order entered in the
Chancery Cause of P.H. Allen and E.L. Noel
vs Annis Gilton et al. on the 9 day of Nov
1901 in your honor court, a commissioner
to make W.T. Gilley P.H. Allen and E.L.
Noel each a deed for their respective
purchases as set out in said decree,
begs leave to report that he has executed
said deeds, as directed by said decree,
and the same is herewith filed for your
honor inspection. All of which is
respectfully submitted.

J.B. Noel Commissioner.

Nov. 12, 1901.

P. H. Allen & E. L. Nod
Commissioners
vs Report - ~~of~~ Dads made

Annis Little et al

Filed Nov 12th 1901

W B Munsey Clerk

In the Clerk's Office of the Circuit Court of the County of
Lee

against P. H. Allen et al Plaintiff &

In Chancery

Annis Litton et al Defendant &

This day J. L. Noel personally appeared
before me, A. B. Munsey Clerk of the said Court,
and being duly sworn, made oath that Lip Lilly

defendant in the said suit is not a resident of the State of Virginia,

Given under my hand as Clerk of the said Court, this 14th day of January
1901.

A. B. Munsey Clerk

P. H. Allen et al

US. { AFFIDAVIT FOR ORDER
OF
PUBLICATION.

Annie Litten et al

J. L. Noel p. q.

Filed January 14 1901
A. B. Munsey Clerk

In the Clerk's Office of the Circuit Court of the County of
Lee on the 14th day of January 1901.

P. H. Allen and E. L. Noel

Plaintiff &

against

Annis Litton, Bradley Litton
Lip Gilley and Gale Gilley

Defendant &

In Chancery

The object of this suit is to obtain a decree for the partition, or sale of that certain tract, or lot of land situated in the town of Pennington Gap, Lee County, Virginia, which was laid off and assigned to the children of Mary Gilley deceased in the partition of the lands of Isaac Howard deceased.

And an affidavit having been made and filed that the defendant Lip Gilley is

^a not resident of the State of Virginia, it is ordered that he do appear here within fifteen days after due publication hereof, and do what may be necessary to protect his interest in this suit. And it is further ordered that a copy hereof, be published once a week for four weeks in the Pennington Gap News, and that a copy be posted at the front door of the court-house of this County on the first day of the next term of the Circuit Court.

A copy—Teste:

J. L. Noel

p. q.

A. B. Mursey

Clerk.

P. H. Allen et al

US. }

ORDER OF
PUBLICATION.

Annis Litton et als

Virginia Lee County Co-vert
 I A B Munsey Clerk of the
 Circuit Court for Lee County
 Virginia do hereby certify
 that I posted a copy of the
 within order of publication
 at the front door of the Court
 house of Lee County on
 the 18th day of February
 1901 that being the 1st day
 of the County Court of
 said County.
 Given under my hand
 this the 19th day of Feb'y
 1901.
 A B Munsey Clerk

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *Jimmie Litton, Bradley
Litton Lip Gilley & Gale Gilley*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held for the
said court, on the *3rd* Monday in *February* 1901 ~~19~~, to answer a bill in
chancery exhibited against *them* in our said court by *P. H.
Allen and E. L. Noel*

And have then there this writ. Witness, A. B. Munsey, Clerk of our said Court, at the court-house,
the *14th* day of *January* 1901, and in the 12^{*5th*} year of the Common-
wealth.

A copy, Teste:

A. B. Munsey Clerk.
A. B. Munsey Clerk ~~Clerk~~

VS.

SUBPŒNA
IN CHANCERY.

P. Q.

To Rules.

..... Court.

*Not Executed as to
Lip Gilley not
found in the
county Jan 24-1801
D. P. Ely D-8
for W. J. Milcha
S. L. C*

4
The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *Annis Litton, Bradley
Litton, Lip Gilly & Gale Gilly*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held for the
said court, on the *3rd* Monday in *February* 1901, to answer a bill in

chancery exhibited against *them* in our said court by *P. H. Allen
and E. L. Noel*

And have then there this writ. Witness, A. B. Munsey, Clerk of our said Court, at the court-house,
the *14th* day of *January* 1901, and in the 128th year of the Common-
wealth.

A copy, Teste:

A. B. Munsey Clerk.

Clerk.

Executed January 24th 1901 by Delivering an
 attested office copy of the within subpoena
 to Gale Gibley also further Executed on
 January the 28 1901 by Delivering an attested
 office copy of the within subpoena to
 Annis Litton and also by Delivering an attested
 office copy of the within subpoena to
 Bradley Litton
 C. P. Ely D.S.
 for W. F. Mileham S. L. C.

Jan 24 1901

P. H. Allen et al

VS. SUBPOENA
IN CHANCERY.

Annis Litton et al

J. C. Noel p. q.

To 2nd February Rules.

Excent Court.

Order of Publication.

In the Clerks office of the Circuit Court of Lee County on January 14th 1901.

P. H. Allen and E. L. Noel. vs. Annis Litton, Bradley Litton, Tip Gilly and Gale Gilley.

The object of this suit is to obtain a decree for the partition or sale of that certain tract or lot of land, situated in Pennington Gap, Lee County Virginia, which was laid off and assigned to the children of Mary Gilly deceased in the partition of the lands of Chad Howard deceased. And an affidavit having been made and filed that the defendant Tip Gilly is not a resident of the State of Virginia, it is ordered that he do appear here within fifteen days after due publication hereof, and do what may be necessary to protect his interest in this suit. And it is further ordered that a copy hereof, be published once a week for four weeks in the Pennington Gap NEWS, and that a copy be posted at the front door of the court house of this county on the first day of the next term of the County Court. A copy—Teste:

J. C. Noel, P. Q. A. B. Muncy, Clerk.

I W. K. Hopkins, Editor
of the Sunnington says that
having verified that the within
order of publication of
A. N. Allen and E. L. Wood vs. Harris
Littell and others was published
for four consecutive weeks
in the Sunnington says that
a weekly paper was published
in Lee County Va, beginning
January 25th and ending July 1st
the 15th 1901, this week 5th 1901
W. K. Hopkins, Editor
the "News"

L. H. Allen & others

no { order of pub^l
entirely

Allen & others